

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

INFORMATION FORM

Name: Matthew Thomas, Jr. Bar Id No.: n/a

Firm: n/a

Address: 31 Roosevelt Avenue

City: Staten Island State: Ny Zip Code\*: 10314-

Facsimile No: \_\_\_\_\_

Please return completed form to:

Michael E. Kunz  
Clerk of Court  
United States District Court  
for the Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street, Room 2609  
Philadelphia, PA 19106-1797

- or -

FAX to:

(215) 597-6390  
(267) 299-7135  
(610) 434-6174

\* Please include zip code and 4-digit extension number

Indicate here if you would like to receive information on the Pilot Fax Notice Program

Indicate here if you would like to receive a Directory of Automated Services

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIAMatthew Thomas, Jr.WY

(In the space above enter the full name(s) of the plaintiff(s).)

13 3946

- against -

United States Medical Licensing Examination COMPLAINT  
(USMLE)Jury Trial:  Yes  No

(check one)

NBME - National Board of Medical  
ExaminersandECFMG - Educational Commission  
for Foreign Medical Graduates(In the space above enter the full name(s) of the defendant(s). If you  
cannot fit the names of all of the defendants in the space provided,  
please write "see attached" in the space above and attach an  
additional sheet of paper with the full list of names. The names  
listed in the above caption must be identical to those contained in  
Part I. Addresses should not be included here.)

## I. Parties in this complaint:

A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff	Name	<u>Matthew Thomas, Jr.</u>
	Street Address	<u>31 Roosevelt Avenue</u>
	County, City	<u>Staten Island</u>
	State & Zip Code	<u>NY 10314</u>
	Telephone Number	<u>917- 956-0368</u>

B. List all defendants. You should state the full name of the defendants, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant can be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name USMLE

Street Address 3750 Market Street

County, City Philadelphia

State & Zip Code Pa. 19104

Defendant No. 2 Name NBME

Street Address 3750 Market Street

County, City Philadelphia

State & Zip Code PA 19104

Defendant No. 3 Name ECFMG

Street Address 3604 Market Street

County, City Philadelphia

State & Zip Code PA 19104

Defendant No. 4 Name \_\_\_\_\_

Street Address \_\_\_\_\_

County, City \_\_\_\_\_

State & Zip Code \_\_\_\_\_

## II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? (check all that apply)

Federal Questions



Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship New York

Defendant(s) state(s) of citizenship Pennsylvania

**III. Statement of Claim:**

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? Ny & PA

B. What date and approximate time did the events giving rise to your claim(s) occur? From 2007 - Present

C. Facts: Please See Attached Summary

What happened to you?

Who did what?

Was anyone else involved?

Who else saw what happened?

#### **IV. Injuries:**

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. None

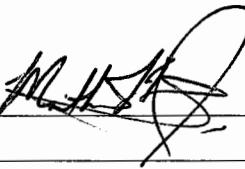
## V. Relief:

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation.

To validate my Score, and/or grant the extension to the 6 attempt rule and the 7 year rule that USMLE & ECFMG State.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 1<sup>st</sup> day of July, 2013.

Signature of Plaintiff 

Mailing Address

320 Oxford Rd

New Rochelle, NY 10804

Telephone Number (917) 856-0368

Fax Number (if you have one)

E-mail Address mathew.thomas.jr@gmail.com

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

For Prisoners:

I declare under penalty of perjury that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, I am delivering this complaint to prison authorities to be mailed to the Clerk's Office of the United States District Court for the Eastern District of Pennsylvania.

Signature of Plaintiff: \_\_\_\_\_

Inmate Number \_\_\_\_\_

Thomas, Jr. -v- USMLE/NBME and ECFMG

Please accept this complaint against the USMLE/NBME and the ECFMG for inappropriate punishment and inconsistent decisions.

The facts are as follows, I registered for my Step 3 exam in mid 2009. On July 27, 2009, I was sent a letter stating that my registration for the Step 3 exam was cancelled due to an investigation regarding Optima University. Optima University was a prep-course I attended. The letter from the Federation of State Medical Boards stated that my Step 3 application, "has been cancelled until this matter is resolved." At that point, July 27, 2009 was the official date my file was placed on hold pending the investigation, and my access to OASIS was locked. This meant that I could not register for any USMLE Steps.

On December 16, 2009, I attended a hearing in front of the Committee of Score Validity to give testimony in an effort to validate my Step 2CK score. On February 17, 2010, I received the outcome of that hearing that my score for Step 2 would not be validated and was told that I had until June 1, 2010 to submit my appeal. As anyone in my position would do I submitted an appeal in June of 2010. USMLE/NBME responded to my appeal on August 2010 and stated that their decision to not validate my score was upheld. I was advised to take the validation exam. In October 2011, I received notification that I did not receive a passing score on my validation exam and now could register to retake the Step 2CK via OASIS.

The July 2009 letter from the Federation of the State Medical Board stated that my registration would be cancelled until the matter was solved.

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In addition, I continue to believe that there were many policies that were violated within the USMLE and ECFMG process during my investigation, such as the violation of the policy and procedures regarding indeterminate scores. Section B, procedure 1, subsection (1), does not comply with my scores. During my attempts, my pattern of scores has increased with each attempt. In subsection (2) my current score does not show an “unexpectedly large increase” over the most recent scores of the same step. In fact, my previous score was 2 points shy of passing.

Section B Procedure 2 (a) discusses the non uniformity of performance, but I did not “omit or answer randomly”, as proven through my exam.

Section B, Procedure 5, states that “staff will notify the examinee of the withholding of scores and **will provide** the examinee with a description of any statistical analysis employed.” At no time did I receive a statistical analysis description. According to a letter I received on August 25, 2010, by NBME/USMLE, it was clear that I did not receive a statistical analysis as stated in your policy. The August 25, 2010 letter, stated, “while the calculation of averages may not be regarded as a complex statistical analysis warranting a written report, the correspondence sent to you advised you a data source employed, the procedure applied and the results of calculation.” With all due respect, I did not receive the procedure applied, data source or a statistical analysis.

My request for a statistical analysis was also requested at my December 16, 2009 hearing. I requested numerous times to receive a summary of how the percentage was calculated and at no time was a response presented to me. Instead, I received a response from Dr. Gerard Dillon, member of the NBME stating, that he thinks there was a “message behind this information.”

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This is evident on pages 15-17 of my transcript. This matter is not about a lesson learned for a student studying for his boards, but instead, it is about true facts that, if not carefully reviewed, will affect my future. Not receiving a true statistical analysis, but instead a “message”, is not complying with your policy.

Section B procedure, 2(c), states, “...to determine whether a clearly reasonable and satisfactory explanation for the results of the statistical analysis has been obtained.” In a letter received by Susan Deitch, from the Office of the Secretary for NBME on February 17, 2010, page 4, it stated that “the Committee did not find it reasonable or appropriate to make presumptions about the validity of your scores on this examination based upon your performance on the non-exposed scored items.” This statement is untrue, in fact a presumption was made when it was presented that the average of exposed questions spent by the test taker was 73 seconds. The committee has made an assumption that based on their presumption that I was exposed to a certain amount of questions based on how many seconds I spent on each question. The difference in time was pure seconds, not minutes. According to my hearing, I did not get all the questions correct that I was presumably “exposed” too. I was penalized because I spent an average of 59 seconds on presumably exposed questions. According to the committee’s explanation, if I spent 73 seconds on an assumed “exposed” question, I would have received credit. Therefore, I should have received credit for the questions that I spent at or about 73 seconds from the question set that are presumably “exposed”, since an average of 59 seconds was used to make this decision, not a statistical analysis. An average would mean that the time spent on questions was less than 59 seconds, as well as above 59 seconds.

According to the committee I scored 66%. Again, due to the fact I don’t have a clear analysis of where the 66% came from, I was forced to do my own math. On page 14 of the

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transcript, I discuss what was presented to me by Janet Carson, attorney for the board, about the number of questions that were counted towards scoring. Out of 346 questions, there were 288 questions in the Step 2 exam that were counted for scoring on the December 2007 exam that I sat for. The passing score is 184. 66% of 288 equal 190.08, a passing score. According to your reasoning a passing score is determined by showing, "presumption that the predicted performance provides a reasonable and appropriate level of confidence with respect to the validity and reliability of the reported results." Obviously I had the majority of the questions correct even at the 66%. With that being said, and not being provided with an actual statistical analysis, my scores were not validated in accordance to your section B procedure, 2 (c).

According to the civil action matter of case 1:09-cv-01043-JDB-cgc, NBME & Federation of State Medical Boards -v- Optima University LLC, et al., evidence of unethical activity was not confirmed until 2008. I took the exam December 2007. As I stated on page 12 of my transcript, Optima University updated their question bank in March 2008, after my exam. Therefore, I had no exposure to those questions. The lawsuit also mentions that there was suspicion in 2007 that an unethical matter may be occurring, but yet no precautions were taken so students like me would have notice and not be placing our career on the line. There are a couple of legal proceedings filed on this matter and the common phrase is "multiple attempts." It is alluding to students who have taken the Step exam multiple times and making the assumption that they only passed because they participated in the Optima University review. I feel that this assumption was made about me because I had numerous attempts and therefore not giving me a fair opportunity to validate my score. The difference for me is that I made consistent improvements with each attempt.

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I have submitted waivers and appeals, I even requested meetings to discuss this matter and work out an amicable resolution, but I was declined each time. My career has been unfairly placed on hold.

In conclusion, like the rest of the students whose scores were validated, I had no knowledge of any unethical matters that were occurring at Optima University. My score is a true reflection of my own hard work.